IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 17TH NOVEMBER 2006 / 26TH KARTHIKA 1928

Crl.MC.No. 135 of 2005(B)

AGAINST THE ORDER DATED 03/11/2004 IN CMP 6397 /2004 IN CC.400/2003 of CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONER: ACCUSED.

USHA, B.T.R.NAGAR,
B.7, NETTAYAM,
KACHANI P.O., TRIVANDRUM.

BY ADV. SRI.K.P.JAYACHANDRAN
SRI.DILIP MOHAN

RESPONDENTS: STATE AND COMPLAINANT.

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SHEREEF V.P.,
VII/668, MEKKETHIL VILA VEEDU,
KADIYAKKONAM, KODUNGANOOR P.O.,
VATTIYOORKAVU, TRIVANDRUM.

BY ADV. SRI. K.G. BHASKARAN, PUBLIC PROSECUTOR
SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 135 OF 2005

Dated this the 17th day of November 2006

ORDER

The petitioner, who is the accused in C.C. 400/2003 in the file of Chief Judicial Magistrate Court, Thiruvananthapuram with respect to the offence under section 138 of the Negotiable Instruments Act, has sought for setting aside the order of the court below in C.M.P. No. 6397/2004 as per which amendments to the pleadings were allowed. It is contended that it is mainly on the basis of the above pleadings that have been sought to be amended that the petitioner/accused had built up his defence.

2. I find that the court below has held that it is typographical errors that are sought to be amended and the same has been allowed. As per annexure 3 affidavit, in support of the petitioners, the complainant has mentioned that the proof affidavit is supported by the documents Ext.P1 to P6. It is evident that the version in the complaint with respect to the

issuance of notice and the receipt/refusal of the same are only mistakes crept in and according to him the same has happened due to inadvertence on the part of the advocates clerk. The date sought to be corrected is 16.10.2003 instead of 4.11.2003 as the date of issuance of the notice and the date of receipt as 25.10.2003, i.e., the date mentioned in the complaint as having the notice returned as refused on 13.11.2003. It is submitted by the counsel for the respondent that the above is in tune with the proof affidavit and the same is supported by the documents produced.

3. I find that this court has held in Madhavi v. Thupran (1987 (1) KLT 488 as well as in Ninan v Rufus Olivero 1994(1) KLT 1984 that although the subordinate records are not having inherent power as such under Cr.P.C the subordinate courts are not powerless in cases where the exercise of power is absolutely necessary for dispensation of justice and when there is no prohibition or illegality or miscarriage of justice involved in such instances.

In the circumstances, I find that the court below has not committed any error in allowing the application as no prejudice as such would be caused to the accused as the corrections sought are supported by the documents. In the circumstances, the Crl.M.C. is dismissed.

K.R. UDAYABHANU, JUDGE.

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